

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

POLAROID CORPORATION,

Plaintiff,

v.

HEWLETT-PACKARD COMPANY,

Defendant.

C.A. No. 06-738-SLR

**DEFENDANT HEWLETT-PACKARD COMPANY'S
CROSS-MOTION TO PRECLUDE**

Defendant Hewlett-Packard Company ("HP") hereby moves for an order excluding the following affidavits and testimony as untimely:

- (1) the Declaration of Dr. Peggy Agouris Regarding Okada Reference (D.I. 193 at Ex. 3);
- (2) the Declaration of Dr. Agouris in Support of Polaroid Corporation's Response to HP's Motion to Preclude Certain Testimony of Polaroid's Expert Dr. Peggy Agouris (D.I. 219 at Ex. 2);
- (3) the Declaration of Mr. Joseph P. Wroblewski filed in support of Polaroid's Response to HP's Motion to Preclude Certain Testimony of Polaroid's Expert Dr. Peggy Agouris (D.I. 219 at Ex. 4);
- (4) Dr. Agouris' testimony regarding the question of whether Polaroid products embody Claim 7 of the '381 patent;
- (5) the Declaration of Walter McCullough filed in support of Polaroid's Response to HP's Motion to Preclude the Report and Testimony of Polaroid's Survey Expert Walter McCullough (D.I. 218 at Ex. 2); and
- (6) the Declaration of Thomas L. Beaudoin filed in support of Polaroid's Opposition to HP's Motion for Summary Judgment on Grounds of Estoppel, Or In The Alternative or In Addition, Laches (D.I. 195 at Ex. 3).

For the reasons outlined in Hewlett-Packard Company's Memorandum In Opposition to Polaroid's Motion to Preclude and In Support Of Hewlett-Packard's Cross-Motion To Preclude and all supporting declarations and exhibits, the above-listed declarations and testimony should

be stricken, the pending summary judgment and Daubert motions should be decided without reference to those declarations, and Polaroid's witnesses should be precluded from testifying at trial with respect to the corresponding subject matter.

Dated: July 10, 2008

FISH & RICHARDSON P.C.

By: /s/ William J. Marsden, Jr.

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*Attorneys for Defendant and Counterclaim-
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RULE 7.1.1 CERTIFICATE

The undersigned certifies that counsel for movants have made a reasonable effort to reach agreement with the opposing attorneys on the matters set forth in the attached motion.

/s/ William J. Marsden, Jr.
William J. Marsden, Jr.

CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2008, I electronically filed with the Clerk of Court the foregoing document using CM/ECF which will send electronic notification of such filing(s) to the following counsel:

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**[PROPOSED] ORDER REGARDING DEFENDANT
HEWLETT-PACKARD COMPANY'S CROSS-MOTION TO PRECLUDE**

AND NOW, the Court, having considered Defendant Hewlett-Packard Company's Cross-Motion to Preclude in this case and all supporting memoranda, declarations and exhibits filed by Hewlett-Packard Company and Polaroid Corporation's opposition to the motion and all supporting memoranda, declarations and exhibits,

IT IS HEREBY ORDERED that Defendant Hewlett-Packard Company's Cross-Motion To Preclude is GRANTED.

SO ORDERED, this ____ day of _____, 2008.

The Honorable Sue L. Robinson